

Chapter VI

Social Security

Program Summary

What Is Social Security?

Social Security is a federal program that provides monthly cash payments to disabled and retired workers, their dependents, and their survivors.

Who Can Get Social Security?

An individual may be eligible for Social Security benefits if he or she is:

- an insured worker reaching full retirement age (currently age 65 and 10 months);
- a disabled insured worker;
- an insured worker age 62 or over electing early retirement;
- the spouse of a retired or disabled worker entitled to benefits who is age 62 or over *or* is caring for a child who is entitled to benefits on the worker's Social Security record and who is either under age 16 or over age 16 and disabled;
- the divorced spouse of a retired or disabled worker who is entitled to Social Security benefits if the divorced spouse is at least 62 and was married to the worker for at least 10 years;
- the divorced spouse of a fully insured worker who has not yet filed a claim for benefits if both the divorced spouse and the worker are at least 62, were married for at least 10 years, and have been finally divorced for at least two years.

How Does a Person Get Social Security?

A person must file an application with the Social Security Administration. An applicant may apply by phone through the toll-free number **1-800-772-1213 (TDD 800-325-0778)** or may apply in person at a local district office of the Social Security Administration (SSA). Some applications may also be filed online at www.ssa.gov.

How Much Social Security Can a Person Get?

The amount of an individual's Social Security benefits depends on the earnings history of the elderly, disabled, or deceased worker on whose Social Security record the benefits are paid.

What Are the Income and Resource Limits?

Eligibility for Social Security is not based on financial need. Therefore, there are no income and resource limits.

How Long Does It Take to Get Benefits?

There are no limits within which an application must be processed. If the eligibility is reasonably straightforward, it may take only a few weeks. If it is complicated by either a disability question or a dispute about the earnings record or the relationship of the applicant to the wage earner, it could take months. If the decision has to be appealed, it can take years.

Social Security

Introduction

Social Security (more formally known as Old Age, Survivors and Disability Insurance or OASDI) is a federal insurance program that provides monthly cash payments to retired and disabled workers and their dependents or survivors. Payments are based on the earnings record of the retired, disabled, or deceased worker and not on the financial need of the worker or the worker's family. The Social Security program is funded through the payment of taxes (FICA) by both employers and employees. It is administered by the Social Security Administration (SSA).

Applying for Social Security Benefits

How and When to Apply

An application must be made in order to receive any type of benefit. If an application is made after the first month in which a person became eligible for benefits, benefits may be paid retroactively for up to 6 months for old age benefits and up to 12 months for disability benefits. An individual who wants to begin receiving Social Security benefits when he or she reaches full retirement age should apply file an application four months before the month in which he or she will reach full retirement age.

To apply for benefits, an individual may personally appear at a local district office of the Social Security Administration and request that an application be taken. To avoid having to wait, an individual may make an appointment for an application by calling the Social Security Administration at **1-800-772-1213**. An initial application may be taken by phone, with follow-up done in person at a district office of the Social Security Administration or by mail. An individual also may apply for Social Security benefits online (www.socialsecurity.gov/applyforbenefits).

Certain applications for Railroad Retirement Benefits and Veterans Administration benefits may be considered applications for Social Security benefits.

What Information Must Be Provided?

An applicant for Social Security benefits generally will need to provide some or all of the following information:

Name, social security number, date of birth, and place of birth;

Whether the applicant has filed a prior application for Social Security benefits, Medicare, or Supplemental Security Income;

- Whether the applicant has been unable to work because of illnesses, injuries or conditions at any time within the past 14 months;

- Whether the applicant was in active military service before 1968 or the applicant or spouse worked for the railroad industry;
- Whether the applicant is or will be eligible to receive a pension or annuity based on employment with the federal, state, or local government;
- Spouse's name, date of birth, and social security number (and name, birth date, social security number, and dates of marriage and divorce of former spouses); and
- Recent earnings information;

Most people do not need the assistance of an advocate during the application process unless they are applying for Social Security disability benefits. An advocate can help disabled applicants be sure that SSA gathers all the medical information it needs to determine whether the applicant is disabled and assist the applicant in obtaining necessary evaluations of his or her medical condition. Although SSA will usually pay for these evaluations, they may not always be scheduled unless an advocate suggests them.

Time Limits

There are no time limits within which applications for Social Security benefits must be processed. Applications in which there are no unusual circumstances may take only a few weeks. Application that are more complicated ones, particularly those involving disability, may take months.

Eligibility for Social Security Benefits

An individual must meet four basic eligibility criteria in order to receive Social Security benefits.

- The worker on whose record the benefits are paid must have worked long enough to be **insured**.
- The worker on whose record the benefits are paid must be at least **age 62, disabled, or dead**.
- The dependents or survivors who will receive benefits on the worker's record must meet eligibility requirements related to **age and relationship to the work**.
- The worker must be a **citizen or an alien permitted to work in the U.S.**

Insured Status

A worker and his or her dependents or survivors cannot receive Social Security benefits unless the worker, at the time an application for benefits is filed or in cases of disability at the time the worker became disabled, is:

- fully insured, *or*

- currently insured, *or*
- insured for disability.

Insured status is based on the number of **credits of coverage** that a worker has earned. In 2007, workers earn one Social Security credit for each \$1000 in earnings in employment covered by the Social Security Act, up to a maximum of four credits per year.

A worker is **fully insured** if he or she has 40 credits *or* credits equal to the number of years after the worker's 21st birthday and the year he or she dies or becomes disabled (unless the worker dies or becomes disabled before age 31), whichever is less. (If a worker is under age 31 when he or she dies or becomes disabled, he or she must have credits equal to at least half of the calendar quarters after his or her 21st birthday and the quarter in which he or she dies or becomes disabled or six credits, whichever is greater.)

To be **currently insured**, a worker must have at least six credits that were earned during the 13 calendar quarters before the worker's death or entitlement to disability or old age benefits. This test is used when the worker is under age 31 or when the recipient is a surviving child or a spouse caring for a surviving child.

To be **insured for disability**, a worker must have earned at least 20 credits within the 40 calendar quarters immediately preceding the onset of disability. This is called the 20/40 requirement.

Age, Death, Disability

Age

A fully insured worker must be at least **age 62** before benefits can be paid on his or her Social Security earnings record, unless he or she is disabled.

Death

An insured worker's survivors may receive Social Security benefits on his or her Social Security earnings record after the work's death if they meet other eligibility requirements.

Disability

An insured worker and his or her dependents may receive Social Security benefits if the worker is **disabled**. To be considered disabled for Social Security purposes, an individual must have a **severe mental or physical impairment** which results from anatomical, physiological or psychological abnormalities and:

- can be **verified by a doctor** on the basis of lab tests, physical examination, or other objective medical procedures, *and*
- has lasted, or is expected to last, a minimum of **twelve consecutive months** or result in death, *and*

- prevents the individual from doing his or her previous work or any other **substantial gainful activity** (generally defined as the ability to earn at least \$900 per month in 2007).

SSA makes its own determinations regarding disability. This means that a decision regarding disability made by another governmental or non-governmental agency is not controlling for the purpose of meeting the disability requirements of the Social Security Act.

The process of attempting to prove disability can be extremely frustrating and lengthy. Applicants who are initially denied should seriously consider appealing the decision, as statistics show that more than half of the appealed denials are eventually approved. Given the complexity of the standards for evaluating disability, an applicant would be wise to obtain the services of an experienced advocate (lawyer, paralegal or other knowledgeable person), especially when appearing at a hearing before an administrative law judge. A referral may be obtained from a Legal Aid office or from the N.C. Bar Association Lawyer Referral Service at 1-800-662-7660.

Eligibility for Dependents and Survivors

Detailed rules determine whether dependents and survivors may receive Social Security benefits on a worker's Social Security record. In all cases, the potential recipient must apply for the benefits and must not be otherwise entitled to a higher benefit on another record.

To qualify as a **spouse**, an individual must be:

- the husband or wife of an insured worker; and
- at least 62 years old.

To qualify as a **divorced spouse**, an individual must:

- be divorced from an insured worker;
- have been married to the wage earner for at least ten years;
- be unmarried; and
- be at least 62 years old

To qualify as a **surviving spouse**, an individual generally must be:

- the **widow or widower** of a deceased worker;
- at least **60 years old** *or* **at least 50 years old and disabled**; and
- **unmarried** at the time of application.

To qualify as a **surviving divorced spouse**, an individual generally must:

- be **divorced** from a deceased worker;
- have been married to the worker for at least **ten years**;
- be **at least age 60** *or* **at least age 50 and disabled**; and

- be **unmarried**.

To qualify as a **mother or father**, an individual must be:

- the **widow or widower** of deceased worker or divorced from the worker;
- **unmarried**; and
- **caring for a child** of the deceased worker who is under age 16 or disabled.

To qualify as a **child**, an individual must be:

- the **child** of an insured worker who is deceased or entitled to old age or disability benefits;
- **dependent** on the worker;
- **unmarried**
- **under age 18** or 18 or older if disabled or still in elementary or secondary school.

To qualify as a **parent**, an individual must:

- be the parent of a deceased worker;
- be at least **age 62**;
- **not have married** since the worker's death; and
- have been receiving at least **half of his or her support from the worker** at the time of the worker's death.

Citizenship and Alien Status

A worker must either be a citizen or an alien permitted to work in the United States. If an alien worked in the U.S. long enough to obtain insured status, he or she does not need to live in the U.S. to receive payments.

Financial Eligibility

Social Security is not a needs-based program. Therefore, there are **no financial eligibility requirements**. If an individual meets all of the eligibility requirements for Social Security, he or she may receive Social Security benefits regardless of how much or how little other income or resources he or she has. The "earnings cap," which previously reduced the benefits of Social Security recipients who worked, has been removed for persons who have reached full retirement age. (Earnings limits still exist for disabled persons and those electing early retirement.) Social Security disability benefits may be reduced if the disabled worker receives workers' compensation benefits or other employment-related disability benefits under federal, state, or local law.

Amount and Payment of Social Security Benefits

Persons who are eligible for Social Security benefits receive a **monthly Social Security benefit check** from the Social Security Administration. Social Security checks for persons who applied before May 1, 1997 receive their checks on the third day of the month following the month for which the payment is due. For example, Social Security checks for January are received on February 3. Other Social Security recipients receive their Social Security checks on the second, third, or fourth Wednesday of the month. Again, the Social Security check that a recipient receives in February is for the month of January.

Benefit Amounts

The amount of an individual's monthly Social Security benefit is determined by a complex formula based on the earnings history of the elderly, disabled, or deceased worker on whose Social Security record the benefit is paid. SSA calculates a **primary insurance amount (PIA)** for each insured worker based on his or her **average indexed monthly earnings**. The Social Security benefit for a fully insured worker who is disabled or applies for Social Security benefits when he or she reaches full retirement age is equal to his or her PIA. Individuals who receive Social Security benefits on the worker's may receive the entire PIA or a percentage of it.

In 2007, the *maximum* Social Security benefit for a worker at full retirement age (currently 65 years, 10 months of age) with maximum earning history is **\$2,116** per month.

Workers who retire early (after reaching age 62 but before full retirement age) receive a reduced benefit. The PIA is reduced by five-ninths of one percent for each month the individual receives an early retirement benefit. An individual who delays retirement and does not apply for benefits until sometime after he or she reaches full retirement age may receive a monthly benefit that is larger than his or her PIA.

An insured disabled worker is not eligible for Social Security benefits during a five-month "waiting period" that begins in the month of the onset of the worker's disability (which may be before or after the worker applies for Social Security benefits). Social Security disability benefits may be reduced if the disabled worker receives workers' compensation benefits or other employment-related disability benefits under federal, state, or local law.

The Social Security benefit for an eligible widow, widower, or surviving divorced spouse of a deceased worker generally is equal to the worker's PIA.

The Social Security benefit for an eligible spouse or divorced spouse of a worker who is receiving Social Security benefits generally is equal to 50% of the worker's PIA (or 75% of the worker's PIA if caring for an eligible child of the worker).

The "family maximum" rule limits the total amount of Social Security benefits that may be paid on a worker's record and may reduce the amount of benefits payable to the worker's dependents or survivors. The family maximum is usually between 150% and 200% of the worker's PIA.

A working individual receiving early retirement benefits has his benefit reduced one dollar for every two dollars in earnings above the earnings limit. The annual earnings limit in 2007 is \$12,960. A higher limit applies in the year the individual reaches full retirement age (for months prior to that date only).

Death Benefit

A lump-sum death benefit of \$255 may be paid upon the death of a person who has worked long enough to be insured under the Social Security program. The lump-sum death benefit may be paid upon the death of the insured person even if he or she was not receiving retirement or disability benefits at the time of death. This payment may be made only to a spouse who was living with the worker at the time of death or to a spouse who, in the month of death, is eligible for certain Social Security benefits based on the worker's record.

Overpayments

Social Security recipients sometimes receive benefits that are later determined to exceed the amount that should have been paid for that period. The most common example is a disability recipient who has returned to work and continued to perform substantial gainful activity (presumed at earnings over \$900 per month in 2007) beyond the nine-month Trial Work Period. When the Social Security Administration discovers the overpayment, it will send a written notice that the overpaid amount must be repaid.

The overpayment may be recovered by withholding future Social Security benefits or garnishing federal tax refunds that would otherwise be paid to the recipient. If the recipient takes no action, no benefits due will be paid until the overpaid amount is recovered. If the recipient would be deprived of necessary living expenses by such recovery, however, a longer repayment schedule may be arranged. The overpayment may be recovered from anyone else who is receiving benefits on the earnings record of the overpaid individual (for example, a spouse or child of a disabled person).

SSA may **waive** recovery of an overpayment from an individual if two conditions are met:

- The individual is found to be **without fault** in causing the overpayment, *and*
 - Recovery would **defeat the purpose of the Social Security Act**;
- or**
- **Recovery would be against equity and good conscience.**

An individual generally will not be found to be without fault if the individual failed to provide required information or provided incorrect information or received benefits he should have known he was not entitled to. However, SSA must consider the individual's education, literacy, learning disabilities, whether the recipient had a payee, misinformation or lack of information from SSA, and other factors in making this fault determination. Recovery will be found to defeat the purposes of the Social Security Act if it would cause the recipient to be without income required for ordinary and necessary living expenses. Recovery is considered to be against equity and good conscience if the recipient relied to his or her detriment on the correctness of the payments.

There is no time limit within which an individual must request that an overpayment be waived. Denial of the request for waiver may be appealed.

Social Security overpayments also may be dischargeable in bankruptcy as long as no fraud was involved.

Appeals

Decisions by the Social Security Administration (SSA) regarding eligibility, payment, overpayment, and most other issues affecting Social Security (and SSI) benefits may be appealed. SSA provides written notification of its decision, and spells out the individual's right to appeal. There are several levels in the appeals process: reconsideration, ALJ hearing, Appeals Council review, and judicial review.

An individual may be represented during the appeals process by a representative. Representatives do not have to be lawyers in the first three appeal stages, but should be specialists in Social Security representation. Only a lawyer can represent an individual if the case is appealed to federal court. Because of the complexity of the system, an individual should obtain the services of a representative before the case is scheduled for a hearing conducted by an SSA administrative law judge.

Attorneys and representatives who specialize in Social Security usually advertise in the yellow pages of the phone book. A referral also can be obtained from the N.C. Bar Association Lawyer Referral Service at 1-800-662-7660.

Representatives usually take Social Security disability cases on a **contingent fee** basis. This means there is no up-front payment, and there is no fee at all unless the Social Security applicant wins the case. If the applicant wins, the representative's fee is generally 25% of the retroactive benefits awarded to the applicant. The fee must be approved by the Social Security Administration. For Social Security appeals not referable for a contingent fee (e.g. cessation of disability where benefits continue pending appeal, overpayment waivers), a referral to the local Legal Aid or Legal Services office may be made.

Reconsideration

Reconsideration may be requested within 60 days of the initial decision. Reconsideration is a complete review of the claim by someone other than the individual who made the original decision. All evidence, plus any additional evidence submitted, will be reevaluated and a new decision will be rendered. If the claimant disagrees with the reconsidered decision, he or she may ask for a hearing before an SSA administrative law judge within 60 days.

Administrative Law Judge Hearing

Social Security hearings are held before administrative law judges (ALJs). The Social Security claimant and his or her representative may attend the hearing and present their case in person. The ALJ will evaluate all the evidence in the Social Security record, plus any additional evidence brought to the hearing, and will issue a decision which will be sent to the claimant and the claimant's representative. If the claimant disagrees with the hearing decision, he or she may ask the SSA Appeals Council to review the ALJ's decision within 60 days.

Appeals Council

The SSA Appeals Council may decide to issue its own decision, remand the case to the ALJ to issue another decision, or allow the ALJ's decision to stand. The claimant will receive a copy of the Appeals Council decision.

Federal Court

If the claimant disagrees with the Appeals Council's action, he or she has the right to file a civil suit in federal district court within 60 days.

Legal Authority

Federal Statute: 42 U.S.C. §401 *et seq.*

Federal Regulations: 20 C.F.R. §401 *et seq.*

Sources of Additional Information

Social Security Administration
300 N. Greene Street
Baltimore, MD 21201

Technical information can be obtained by calling the Social Security Administration at 1-800-772-1213 from 7:00 a.m. to 7:00 p.m.

Information is also available on the Internet at www.ssa.gov.